

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

LAVERN BERRYHILL,

Plaintiff,

v.

SCOTT PRUITT, et al.,

Defendants,

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No. CIV 14-111-JHP-SPS

OPINION AND ORDER
DENYING LEAVE TO PROCEED IN FORMA PAUPERIS

Plaintiff Lavern Berryhill, an inmate in the custody of the Oklahoma Department of Corrections who is incarcerated at Oklahoma State Penitentiary (OSP) in McAlester, Oklahoma, is back before this court with his familiar allegations of an ongoing conspiracy to conceal his kidnaping and illegal imprisonment, pursuant to allegedly void judgments and sentences. The defendants are Oklahoma Attorney General Scott Pruitt, OSP Warden Anita Trammell, and the OSP Health Administrator.

Plaintiff claims he suffers from “large ugly rashes” on his legs, mental illness, insomnia, and head pain. He asserts he has been deprived of his medications, eyeglasses, hygiene items, toilet paper, and adequate food. He requests a transfer to a “medical mental health and physical health rehabilitation center” and to be given his psychiatric medications, along with \$18,000,000 in compensatory and punitive damages from each defendant.

Plaintiff also has filed a motion for leave to proceed *in forma pauperis*. A review of his litigation history, however, indicates he has accumulated at least three prior civil rights actions that count as “strikes,” pursuant to 28 U.S.C. § 1915(g):

In no event shall a prisoner bring a civil action or appeal a judgment in a civil

action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical harm.

28 U.S.C. § 1915(g).

The record shows that plaintiff has filed at least four civil rights actions in this court that qualify as “strikes” under 28 U.S.C. § 1915(g), because those cases were dismissed as frivolous and malicious: *Berryhill v. Evans*, No. CIV-10-126-RAW-SPS (E.D. Okla. June 14, 2010) (Attachment 1 to this Opinion and Order); *Berryhill v. Seay*, No. CIV-10-151-JHP-SPS (E.D. Okla. May 10, 2010) (Attachment 2); *Berryhill v. White*, No. CIV-10-176-JHP-SPS (E.D. Okla. June 7, 2010) (Attachment 3); and *Berryhill v. Payne*, No. CIV-10-188-JHP-SPS (E.D. Okla. June 15, 2010) (Attachment 4).

In an attempt to avoid the consequences of his litigious past, the caption to plaintiff’s complaint states he is in imminent danger of serious physical harm as follows:


Extreme imminent danger 42 U.S.C. § 1983 complaint against state officials individually & for personal liabilities debts. Has Plaintiff in 42 U.S.C. § 1985(3) KKK Act 6th, 13th, 14th Amends. state race hate judicial kidnap and are at this date & time depriving Plaintiff of his psy medication of 200 mg of benedryls is causing me of severe sleep deprivation & intentional infliction of severe mental anguish & emotional distress and extreme severe constant headaches.

(Docket No. 1 at 1). After careful review of plaintiff’s motion and his complaint, however, the court finds he has not demonstrated he actually is in imminent danger of serious physical injury and that he qualifies for the exception in 28 U.S.C. § 1915(g).

ACCORDINGLY, plaintiff’s motion for leave to proceed *in forma pauperis* (Docket No. 2) is DENIED. Plaintiff is directed to forward the **\$350.00** filing fee to the Court Clerk

within twenty (20) days. The agency having custody of plaintiff is ordered to release funds from plaintiff's accounts, including plaintiff's trust account, for payment of the filing fee. Failure to pay the entire filing fee or to show cause for failure to pay the fee will result in dismissal of this action.

IT IS SO ORDERED this 10th day of April 2014.



James H. Payne
United States District Judge
Eastern District of Oklahoma